UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JAMES CHAVEZ,

Plaintiff,

vs. **No. CIV 10-205**
(JURY IS REQUESTED)

JOHN STOMP, Individually and in his Official Capacity as an employee and supervisor of CITY OF ALBUQUERQUE WATER UTILITY AUTHORITY, and the CITY OF ALBUQUERQUE, a municipality,

Defendants.

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS
PURSUANT TO THE CIVIL RIGHTS
ACT OF 1964, AS AMENDED, AND 42 U.S.C. § 1983

PLAINTIFF, JAMES CHÁVEZ, brings this suit for damages for racial and religious discrimination pursuant to Title VII of the Civil Rights Act of 1964, as amended, and for deprivation of rights under 42 U.S.C. § 1983.

JURISDICTION AND PARTIES

1. The Plaintiff is a resident of Albuquerque, New Mexico, within the jurisdiction and venue of this Court, and at all times material was a public employee employed by the City of Albuquerque, New Mexico, Water Utility Authority.

2. Defendant John Stomp was at all times material a public employee employed by the City of Albuquerque Public Works Division, an agency of the City of Albuquerque, and was the and was at all times herein operating under color of law and within the scope course of his public employment and individually.

3. Defendant John Stomp was at all times herein a supervisor of the Plaintiff in his employment and the claims against the Defendant stem from his employment and from acts of the Defendant as an individual.

4. Defendant City of Albuquerque ("City") is a municipality of the State of New Mexico, and was at all times material the employer of the Plaintiff and Defendant John Stomp.

5. The Plaintiff is an Hispanic male.

6. All events material to this action occurred in Albuquerque, New Mexico, within the jurisdiction and venue of this Court.

FACTS COMMON TO ALL COUNTS

The Plaintiff re-alleges the allegations contained in the preceding paragraphs and further states:

7. The Plaintiff has been employed by the City of Albuquerque since the year 2000, and his present position is Senior Engineer with the Water Utility Authority.

8. Since January, 2006, the City of Albuquerque has passed over the Plaintiff, who is Hispanic, for promotion in his employment in favor of non-Hispanic, non-minority applicants.

9. By the Plaintiff's count he has been passed over for promotion approximately seventeen (17) times in favor of non-Hispanic and non-minority applicants.

10. The Plaintiff was equally qualified or more qualified than most or all of the applicants for the promotions.

11. The City has systematically promoted non-Hispanics and non-minorities where there were Hispanic applicants who were equally or more qualified for the positions, including the Plaintiff.

12. Defendant Stomp is the Plaintiff's superior in the Division of Public Works, and has been involved in the promotion process.

13. Defendant Stomp is a devoutly religious Christian who often attempts to discuss his religious convictions with others in the workplace, including the Plaintiff, and has at times attempted to get the Plaintiff to attend his church, and on one occasion gave the Plaintiff a Bible.

14. The Plaintiff does not have strong religious convictions and has resisted the attempts of Defendant Stomp to convert him to his religion.

15. Upon information, the Plaintiff believes that the Plaintiff's lack of response and resistence to Defendant Stomp's religious advances has caused him to be treated unfavorably in the promotion process and has resulted in discrimination and retaliation against the Plaintiff.

16. As a result of the systematic exclusion of minorities and the Plaintiff in the promotion process by the City, and the imposition of Defendant Stomp's religious convictions in the promotion process, the Plaintiff has lost wages, benefits and promotions in his employment.

17. The Plaintiff has suffered disparate treatment from the discriminatory promotion process by the City and Defendant Stomp's religious convictions, and has lost promotions in his employment and attendant wages and benefits.

COUNT I - RACIAL DISCRIMINATION
(CIVIL RIGHTS ACT OF 1964, TITLE VII)

The Plaintiff re-alleges the allegations contained in the preceding paragraphs and further states:

18. The Defendants have systematically and persistently discriminated and retaliated against the Plaintiff in his employment by refusing to promote him to jobs receiving higher authority and wages, and by promoting non-minority applicants who were lesser qualified for the positions.

19. As a result of the systematic discriminatory policies of the Defendants, the Plaintiff has suffered racial discrimination and loss of wages and benefits.

WHEREFORE, the Plaintiff respectfully requests trial by jury as to this count and all counts in this Complaint that are triable to a jury, and requests that, after trial, the Court award damages as may be found by a jury in this matter for damages suffered as a result of the discriminatory and retaliatory actions of the Defendant as set forth above.

COUNT II -RELIGIOUS DISCRIMINATION (CIVIL RIGHTS ACT TITLE VII)

The Plaintiff re-alleges the allegations contained in the preceding paragraphs and further states:

20. The Defendants have systematically and persistently discriminated and retaliated against the Plaintiff in his employment by refusing to promote him to jobs receiving higher authority and wages based upon his religious convictions.

21. As a result of the actions of the Defendant, the Plaintiff has suffered religious discrimination and loss of wages and benefits.

WHEREFORE, the Plaintiff respectfully requests trial by jury as to this count and all counts in this Complaint that are triable to a jury, and requests that, after trial, the Court award damages as may be found by a jury in this matter for damages suffered as a result of the discriminatory and retaliatory actions of the Defendant as set forth above.

COUNT III - DEPRAVATION OF RIGHTS
(42 U.S.C. §1983)

The Plaintiff re-alleges the allegations contained in the preceding paragraphs and further states:

22. The Plaintiff is guaranteed the right to freely practice a religion or to not adhere to any religion by the Constitution of the United States, and the attempts by Defendant Stomp in his position as the Plaintiff's supervisor or superior to influence the Plaintiff on religious matter and in retalioating against the Plaintiff act to deprive the Plaintiff of his rights.

23. Defendant Stomp, acting under color of law, has discriminated and retaliated against the Plaintiff because of his resistance to the attempts of the Defendant to impose his religious beliefs on the Plaintiff by using his position with the City to refuse him promotion to jobs receiving higher authority and wages where the Plaintiff was qualified to fill those jobs.

24. As a result of the actions of the Defendant, the Plaintiff has suffered religious discrimination and loss of wages and benefits.

WHEREFORE, the Plaintiff respectfully requests trial by jury as to this count and all counts in this Complaint that are triable to a jury, and requests that, after trial, the Court award damages as may be found by a jury in this matter for damages suffered as a result of the discriminatory and retaliatory actions of the Defendant as set forth above, and for the depravation of the Plaintiff's rights and privileges as guaranteed by the Constitution of the United States.

Respectfully Submitted,
MONTOYA LAW, INC.

Digitally signed by Dennis W. Montoya
Location: Albuquerque, NM
Date: 2010.03.05 21:45:08 -07'00'

Dennis W. Montoya, Esq.
Montoya Law, Inc.
Attorney for Plaintiff
P.O. Box 15235
Rio Rancho, NM 87174-0235
(505) 246-8499